

General Information Letter: The Department of Revenue accepts electronic funds transfer payment of withholding taxes, but currently does not accept electronic filing of withholding returns.

August 7, 2001

Dear:

This is in response to your letter dated June 29, 2001 in which you state the following:

We are writing you for clarification of Illinois' requirements for the electronic signature of and electronic systems for the Form IL-W-4, *Employee's Illinois Withholding Allowance Certificate* and Form IL-W-5-NR, *Employee's Statement of Nonresidence*. Based on our discussions with you on June 6th, 2001, and our own review of the relevant laws and regulations, there is no specific or official authority that allows for the use of electronic systems and signatures in meeting Illinois' requirements for the completion, filing, and retention of Forms IL-W-4 and IL-W-5-NR.

Because of the widespread use of electronic systems for the collection of payroll and employment tax data, the Internal Revenue Service (IRS) released final guidelines in 1997 (TD 8706) that allow for the use of electronic systems and electronic signatures for completion of the federal Form W-4, *Employee Withholding Allowance Certificate*, as well as other federal withholding allowance certificates (e.g., Forms W-4S, W-4P and W-5). This IRS guidance is summarized in the enclosed Attachment I.

We would greatly appreciate your review of these IRS guidelines in providing us with a written ruling as to the extent that the Illinois Department Of Revenue will accept these federal guidelines as applicable to Illinois' withholding allowance certificate requirements. For your convenience we have also enclosed a second document (Attachment II) that both outlines our conversations with the Illinois Department Of Revenue concerning electronic signatures and systems for withholding allowance certificates and any pertinent Illinois statutes or regulations we identified. Please submit your written ruling either within Attachment II and sign the document where indicated, or provide us with a separate signed letter.

We ask that in providing this written ruling you include comments and/or additional clarification with respect to the following subject areas:

1. Illinois' conformity to the federal guidelines in each of the four areas identified;
2. The applicable authority that supports the responses provided in (1) above;
3. Any other comments concerning conformity with, or exceptions to the federal guidelines in the referenced areas; and
4. Alternatives to submitting actual paper copies or facsimilies of forms IL-W-4/IL-W-5-NR in meeting the employer reporting requirements for certain of these documents.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill.Adm.Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

The Illinois Department of Revenue

Although your correspondence focused on the Illinois Department of Revenue's treatment and requirements for the electronic completion, signature, filing and retention of Forms IL-W-4 and IL-W-5-NR, I would like to first address the Department's policies in general with regard to electronic filing.

The State of Illinois and the Illinois Department of Revenue will, in the words of Governor George Ryan, "innovate in how to use technology to do [its] job, invest in [its] technology infrastructure and work every day to increase the number of customers who can make use of this marvelous tool." The Department intends to build an "electronic portfolio" of services; services that not only make compliance easier, but add value to the taxpayer's experience with state government.

This portfolio of services will include a single gateway through which a business can interact with the Department. The Department recognizes that a state that boasts a system that provides a single electronic gateway through which a business entity can securely take care of all of their planning, compliance and transacting needs, is one that has an advantage in attracting and keeping business.

Governor Ryan, in a recent speech, indicated that Illinois will distribute millions of digital I.D.s to citizens and businesses to enable them to do business with the state in an integrated, secure web-driven environment. That means employers will be able to file taxes securely over the Internet through one portal and businesses can file reports electronically.

In fact, at the request of the Governor's Office, the Department, in conjunction with the IRS, is developing a prototype integrated electronic system for a single point filing of state and federal employer quarterly tax and wage reports and payments.

Furthermore, Glen L. Bower, the Director of the Illinois Department of Revenue, has been appointed to the Internal Revenue Service's Electronic Tax Administration Advisory Committee. With this appointment comes the recognition that the Illinois Department of Revenue will be looked upon as a national leader in the areas of electronic tax administration and e-government. Recently, the Center for Digital Government in conjunction with the Progress and Freedom Foundation and Government Technology magazine released the results of its Fourth Annual Digital State Survey. The Illinois Department of Revenue received a score of 98.8 out of 100 and has captured 3rd place in the Taxation/Revenue Section of the survey. This is an increase over last year where the Department was ranked 8th with a score of 88.9. This section of the Digital Survey shows which states allow taxpayers to download and submit tax forms online, customer service availability online, and if states use a digital system to record, store, and retrieve tax records.

The import of Governor Ryan's vision for this State, and the Department's position as a leader in implementing that vision, is that electronic filing is strongly encouraged by the Department. In fact, this year, the Department received 1,265,000 electronic IL-1040s, an increase of 18 percent over last year's record. Nearly one return out of four came to the Department electronically, and the number of electronic IL-1040's doubled during the previous three years.

The Department has recently undertaken numerous projects designed to avoid the potential for inefficiency inherent in the creation of a new electronic system. These include the Integrated Registration and Identification System (ISIS), Integrated Tax Project (ITP), Revenue Tax Management Systems (RTMS) and Tax Application Architecture (TAA) projects. These projects are ongoing and are endeavoring to create an electronic system fully compatible with the Department's mission and values. These new electronic systems will allow individuals, businesses and tax professionals to use a single electronic system with confidence in its ability to communicate with the Department.

The Department's prototype integrated electronic system is intended to allow taxpayers to file both state and federal employer quarterly tax and wage reports and payments. This will necessitate that the Department's electronic system be able to communicate with the Internal Revenue Service and that the information submitted be in conformity with the guidelines established for the Internal Revenue Service's electronic system.

Questions

Your correspondence contained a chart with four questions.

1. Are electronic signatures for employee elections on the withholding allowance certificate allowed?
2. Can an electronic system be used in all instances? For instance, under federal law, can an electronic system be used for the initial withholding allowance certificate (the first certificate filed upon hire), an employee who claims more than 10 withholding exemptions, or claims an exemption from withholding and earns more than \$200 per week?
3. What constitutes a valid electronic signature (e.g. PIN, IVR)?
4. What information must be retained in an electronic system; how long must this information be kept; if there are withholding allowance certificate reporting requirements, how are they met; and what audit standards must the electronic record keeping system meet?

You also asked for additional clarification regarding what format will be accepted in meeting the Illinois reporting requirements. Specifically, you have requested whether the Illinois Department of Revenue will accept computer-generated lists or magnetic media.

Discussion

I noted from your correspondence that you had completed a telephone survey that included conversations with the Illinois Department of Revenue. It was apparent from your comments that it is your belief that the Illinois Department of Revenue is currently accepting the electronic signature of and electronic storage of digital Forms IL-W-4 and IL-W-5-NR.

As you noted in your correspondence, there is in fact no specific or official authority that allows for the use of electronic systems and signatures in meeting Illinois' requirements for the completion, filing

and retention of Forms IL-W-4 and IL-W-5-NR. At this time, Illinois allows for the electronic filing of eligible individuals' personal income tax forms (Form IL-1040) (See IIT Reg. Sec. 105.100 *et seq.*) as well as eligible businesses' Forms IL-ST-1s (See IIT Reg. Sec. 750.100 *et seq.*). The Department also accepts electronic payment from these eligible individuals and businesses. Finally, the Department accepts electronic funds transfers for approximately sixteen different taxes.

As you may be aware, many Illinois forms are available electronically through the internet, including Forms IL-W-4 and IL-W-5-NR, however, at this time, the Illinois Department of Revenue's electronic filing system does not support an electronic method for completion, filing or retention of said forms.

I would like to apologize for any confusion that may have occurred as a result of your telephone conversations with the Illinois Department of Revenue. From your comments, and my research and discussions regarding electronic filing with the Department, it appears that the availability of forms electronically was confused with your question regarding the electronic filing, signature and retention of such forms.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Matthew S. Crain
Staff Attorney -- Income Tax